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MAILED

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OFFICE OF PETITIONS

In re Patent No. 7,579,469
Issued: August 25, 2009
Application No. 10/739,208
Filed: December 18, 2003
Attorney Docket No: 09-0272

: DECISION ON REQUEST
: FOR RECONSIDERATION
: OF PATENT TERM ADJUSTMENT
: AND
: NOTICE OF INTENT TO ISSUE
: CERTIFICATE OF CORRECTION

This is a decision on the RECONSIDERATION OF APPLICATION FOR PATENT TERM ADJUSTMENT filed on October 16, 2009 and treated under 37 CFR 1.705(d), requesting that the patent term adjustment indicated on the above-identified patent be corrected from 611 days to 1026 days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by nine hundred four (904) days is **GRANTED to the extent indicated herein**.

As the period from the filing date of the request for continued examination (RCE) to the issue date of the patent is not included in the "B" delay period, the over three year period begins on December 18, 2006 and ends on December 18, 2008, the day before the RCE was filed, and the B delay considering the 8 days of overlap is 731 days. See 35 U.S.C. 154(b)(1)(B)(i). Non-overlapping B delay is 723 days. Further, patentee fails to account for the filing of a Notice of Appeal on August 19, 2008. The 122 days of the over three year period consumed by appellate review, beginning on August 18, 2008 and ending on December 19, 2008, the date the RCE was filed, are not included in the B delay. See 35 U.S.C. § 154(b)(1)(B)(ii). As such, the patent term adjustment is $904 (416 + 8 + \text{"A delay days"} + 731 \text{"B delay days"} - 8 \text{ days overlap} - 122 \text{ days excluded} - 121 \text{ applicant delay days})$, not 1026 days.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or

patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **nine hundred four (904) days**.

Telephone inquiries specific to this decision should be directed to Senior Petitions Attorney Patricia Faison-Ball at (571) 272-3212.

A handwritten signature in black ink, appearing to read 'Anthony Knight', is positioned above the printed name and title.

Anthony Knight
Director
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

DRAFT
UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,579,469 B2
DATED : August 25, 2009
INVENTOR(S) : Daniel Kuzmich

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (611) days

Delete the phrase “by 611 days” and insert – by 904 days--